

No Justice for Kathleen

It was almost nine years ago that we the family of Kathleen Smith learned that she had been brutally murdered in her own home. She is dearly missed and we continue to mourn the lack of her presence in our lives. While we know that we can never reverse the terrible tragedy that befell her, we had hoped that we could achieve some semblance of justice in that the man who killed her would be tried and convicted for that crime. The hope of that ever happening was extinguished today when Jose Pazos died at the University of Vermont Medical Centre due to complications from a heart attack. A dead person cannot be tried for homicide; the D.A.'s office will soon vacate the charges.

We waited years as Pazos, at that time in the custody of the criminal system moved from lawyer to lawyer refusing to cooperate with each until a ruling related to competency was finally entered more than 3 years after Kathleen's murder and he was committed to the Department of Mental Health. During that commitment process we sat in the courtroom and listened to testimony about the horrible things Pazos had done to Kathleen. Once he was committed we became involved in the parallel tracks of the Family Court System and the Criminal Justice System where we observed sparse and disjointed communications between the two as to medication, continued hospitalization and treating therapists reports as to Pazos' mental state. Our frustration at the lack of coordination between the systems was further compounded by the lack of information provided to us as victims of the crime. Every step that was taken in the proceedings was focused on the rights of the accused killer while little if any attention was given to bringing him to trial for his vicious and brutal attack. When the matter of competency was brought before the criminal court again in 2017 we watched in disbelief as hearings were continued with motions being made at the last minute related to disputes between counsel and expert witnesses. We waited for months after those hearings to finally receive a ruling from the then retired judge that Pazos was still not competent to stand trial notwithstanding the judge's statement that "The court has never seen in a report in any previous case addressing competency issues such a sophisticated understanding of the legal processes and potential defenses as revealed by the defendant in the reports prepared by the parties' experts." Even as he made his ruling the judge questioned Pazos' unwillingness versus his inability to aid in his own defense. At the time of Pazos's death he was again being examined by a forensic psychiatrist as to his competency to stand trial based on a report filed by his treating psychiatrist questioning whether his refusal to cooperate with the process "is secondary to an ongoing undercurrent

of delusional beliefs, or if his refusal is an intentional ploy to delay his court hearing.” The justice that we demanded for Kathleen has eluded us by a system hamstrung with delays, miscommunications, cross purposes and a seeming disinterest on the part of many of its players in getting at the truth.

It is important to understand that Pazos was essentially homeless prior to killing Kathleen. He lived in the woods and he had developed delusions about Kathleen of which we will never know or understand, targeted her, stalked her, broke into her home in the middle of the night, tied her up and murdered her. He then stole and abandoned her car. When apprehended by the police they seized his computer, an examination of which revealed searches regarding the knots for the ropes he used to restrain her and searches for obituaries about her – ***before her body had even been discovered when he was the only one who knew she was dead.*** There is physical evidence that puts him at the crime scene and evidence of his DNA on the murder weapon. A quick reading of the evidence clearly points to his guilt and premeditation, as well as the deliberateness of his actions before and after the murder.

Through all of the hearings addressing medication and competency– he had been staying at the Vermont Psychiatric Care Hospital in Berlin, where his ward has been described as a “high-end College dorm” by one of the assessing psychiatrists. Moreover, he was continually watched by two guards (at the expense of the Vermont taxpayer), had been found with crude weapons, and searched the internet for means of escape. In all of his assessments, Pazos refused to talk about what happened to Kathleen, he would neither mention her name, nor would he discuss what had brought him into custody. This clear attempt at self-preservation is indicative of some competent capacity. Prison would have been a very different experience for him, without any of the attendant comforts that he was experiencing; given the physical deprivations as well as the pervasive threat of violence– why would he want to leave the hospital? There is only an upside to him to being found non competent and a downside for him to be tried, convicted, sentenced and then imprisoned. Pazos was described by another psychiatrist as “playing the long game”; – in our view he continually manipulated the system to his benefit, to be found not competent and to remain where he was.

Sadly, Pazos case illustrates the difficulty in the state of Vermont when there are psychiatric issues on the part of the defendant that must be dealt with by the criminal justice system. The lack of coordination between the systems combined with a suspect who as many of the evaluating psychiatrists described as having few negative symptoms

allowed him to take advantage of weaknesses and manipulate both systems. The other failure evident in these processes is the lack of communication and participation afforded to victims. In our particular case we have a somewhat sophisticated understanding of these processes as our family includes two lawyers and a corrections officer. We were very proactive in our communications with both the prosecutor's office and to the extent permitted the attorney general's office who represented the Mental Health System. Notwithstanding we were often overlooked with respect to the ongoing proceedings and essentially given no voice. We can only imagine how a family without this type of background would be able to understand these types of proceedings or even what questions to ask to arrive at some kind of understanding. The lack of coordination between the systems and lack of communication to the victims was in evidence even during the final days of this saga. No communications were made to law enforcement when Pazos was transported to the hospital resulting in no guard being present until an "interested party" contacted the police. Even though the family had immediately inquired as to who was guarding Pazos when we learned he had been transported to the hospital the way we learned of this lapse was by reading about it in a news report.

As members of Kathleen's family, our hope is that no other family will have to experience the emotional pain and anguish that comes from having a loved one killed in such a brutal and callous manner and then watch while the accused plays games and manipulates both sides of a failed system. We are experiencing a sense of relief now that Pazos is no longer a danger but we will never have justice for Kathleen - our sister, our mother, our cousin, our aunt, our friend - who is greatly loved and greatly missed. That is downside of this story, and that is what justice looks like in Vermont.